

What Are Works Councils?

SUBJECT: Works Council Operations in the Federal Republic of Germany (FRG)

1. FRG has a unique employee representation system in private industry and public service which is centered around works council organizations.

2. By virtue of the NATO Status of Forces Agreement (SOFA), the Sending States Forces must abide by the modified version of the German Personnel Representation Law (GPRL) which is also applicable in the German public sector.

3. Different to what US citizen managers may have experienced in working with US labor unions, the GPRL does not envision a controversial relationship between management and works councils. To the contrary, the GPRL provides that management and works councils cooperate in mutual trust to protect employee interests and accomplish the organizations' mission.

4. The most prevalent cause of friction between commanders and the councils is failure by management to observe the works councils' rights.

a. These rights are absolute. In the majority of cases, the works councils work effectively with management in resolving problems provided their rights are respected. When their rights are not observed, actions taken by management may be null and void.

b. Works councils may initiate labor court action to force management to adhere to its obligations under the GPRL. Management may also request a labor court to determine the exclusion of a member from the works council or the dissolution of the works council because of gross violation of legal obligations. Lawyers' fees and court costs emanating from such actions must be borne by management.

5. Works councils have the following major functions:

a. Propose actions that serve the agency and its employees.

b. Ensure management observes laws, executive orders, tariff agreements, shop agreements, and regulations that are for the benefit of the employees.

c. Receive proposals and grievances from employees. If they appear to be justified, work for adoption or redress through negotiations with management.

6. To a varying degree, works councils have the legal right to participate in nearly all organizational and personnel actions which affect local national employees. In detail, works councils have:

a. The right to be heard when making proposals for the benefit of the employees, or when representing employees in grievances.

b. The informal right to receive timely and comprehensive information on all management plans and actions affecting the employees, e.g. management must inform the works council when it plans to conduct a study of an organization. Upon completion, management only needs to inform the works council if it decides not to implement any changes as a result of the study. However, if management intends to implement recommendations, it must advance to the formal process of exchanging information, consulting, and/or negotiating with the works council. This is formally carried out through the process of consultation, cooperation, and codetermination.

c. Consultation. On four types of actions, the works council must be informed and offered the opportunity to express its opinion before actions are effected. Once management hears the works council and considers its arguments, it may effect the action without any further response to it. The actions are:

- (1) Instant employee dismissal for cause.
- (2) Embarking on new construction or modification of existing facilities.
- (3) Submitting local national manpower plans to higher headquarters.
- (4) Personnel planning.
- (5) Fundamental modification of work methods and processes.

d. Cooperation.

(1) The purpose is to solicit the works council's morale support to an action, rather than taking the action against the explicit desire of the works council. Only management may initiate a request for cooperation. The works council then has the right to deliberate with management and have its opinion heard.

(2) Management is required to provide the works council a written decision concerning the works council's recommendations. Works council may appeal management's decision to the next higher level commander if its recommendations are rejected. The highest level decision authority in this process is the Commanding General, USAREUR. He has delegated this authority to the ADCSPER (Civilian Personnel).

(3) The following matters are subject to the above cooperation procedure:

- (aa) Appointment.
- (bb) Assignment of higher level duties, upgrading or downgrading, initial grading.
- (cc) Establishment of social plans including retraining plans for the compensation or mitigation of financial disadvantages caused by rationalization measures.
- (dd) Measures for improvement of work performance, simplification of work flow.
- (ee) Introduction of basically new working methods.
- (ff) Preparation of administrative instructions of an agency on internal matters of social and personal concern to the employees within its area.
- (gg) Deactivation, reduction in strength, relocation, or merger of agencies, or major parts thereof.
- (hh) Ordinary Employee Terminations. Also: Termination of white- and blue-collar employees during the probationary period.

e. Codetermination.

(1) Either management or the works council may initiate a request for codetermination. Under the codetermination procedure, all actions initiated by management may only be taken with the works council's approval or after action by an arbitration committee.

(2) Under this procedure, management must consult with and consider the works council's recommendations. In case of disagreement, management or the works council (depending on who initiated the action) may submit an appeal to the next higher authority where a district or head works council exists. The highest level decision authority is an arbitration committee called "conciliatory committee". It is composed of one member each designated by the Head Works Council and HQ USAREUR/7A, and a chairperson, not of the US Forces, mutually agreed upon by the two parties, or designated by the Secretary of NATO, or by the President of the (German) Federal Administrative Court or the Secretary of the Western European Union provided the two parties jointly agree to request either one of them to make this designation.

(3) The following matters are subject to the codetermination procedure:

NOTE: If initiated by management, action by the arbitration committee in the following five matters will consist of a determination on whether or not the works council has used legally valid reasons for its nonconcurrence. If

initiated by works council, no action by the arbitration committee. Final decision by Commanding General, USAREUR.

- (aa) Transfer to another agency or reassignment within the agency, if it is connected with a change of the permanent duty station.
- (bb) Employee Detail for a period of more than three months.
- (cc) Extension of employment beyond retirement age.
- (dd) Instructions which restrict the employee's free choice of domicile.
- (ee) Denial or withdrawal of approval for a second employment.

NOTE: If management requests the following actions, action by the arbitration committee will consist of a decision which is binding on both works council and management. If action is requested by the works council, Commanding General, USAREUR renders the final decision.

- (ff) Granting of welfare support, advance payments, loans, and corresponding social allowances.
- (gg) Assignment and cancellation of quarters that are at the disposal of the agency as well as the establishment of conditions for their use.
- (hh) Assignment of leased land and conditions for its use.
- (ii) Selection of employees for advanced training.
- (jj) Contents of personnel questionnaires for employees.
- (kk) Procedures for employee performance appraisal.
- (ll) Appointment of confidential doctors or work physicians as employees.

NOTE: If management or works council requests the following actions, action by the arbitration committee will consist of a decision which is binding on both works council and management.

- (mm) Establishment of the beginning and end of daily work hours and breaks; distribution of work hours over individual weekdays.
- (nn) Time, place, and method of payment of salaries and wages.
- (oo) Setting up the leave plan, scheduling the time periods for annual leave of individual employees if no agreement has been reached between the agency chief and the employees concerned.
- (pp) Questions regarding wage structure within the agency, particularly establishment of principles governing pay, introduction and application of new pay methods and changes thereof, and determination of piece work and premium rates and corresponding remuneration based on performance, including monetary factors.

- (qq) Establishment, management and dissolution of social facilities regardless of their legal nature.
- (rr) Implementation of vocational training for salaried employees and wage earners.
- (ss) Measures to prevent on-the-job accidents and other damages to health.
- (tt) Principles for the evaluation of accepted suggestions within the scope of the agency's suggestion program.
- (uu) Determination not to advertise vacancies that shall be filled.
- (vv) Regulations concerning good order within the agency, and conduct of employees.
- (ww) Layout of workplaces.
- (xx) Introduction and application of technical means designed to control the conduct or the performance of employees.

NOTE: If initiated by management, action by the arbitration committee in the following three matters will be a decision in the form of a recommendation. Final decision by Commanding General, USAREUR. If initiated by works council, no action by the arbitration committee and final decision by Commanding General, USAREUR.

- (yy) General matters concerning advanced training of employees.
- (zz) Issue of guidelines for the selection of personnel in case of appointments, transfers, re-gradings, and notices of termination of employment.
- (ßß) Claims for compensation of damages against employees.

7. Critical Time Periods. There are a number of sensitive time periods which need to be observed under the cooperation and codetermination procedure.

a. Works councils have 10 work days in which to consider and respond to management proposals. Management is also expected to respond within 10 work days to works council proposals under the codetermination procedure.

b. Under the codetermination procedure, management or works councils must submit an appeal against the other party's nonconcurrence within 6 work days to the next higher authority. If this time limit is missed, the action must be started over again.

c. Under the cooperation procedure, works councils must submit appeals of management decisions to the next higher authority within 3 work days from receipt of management's decision. If this time limit is missed, management may implement the decision. If not, action to implement must be suspended until final decision is made at higher echelon.